

The Broadcast Team, Inc.
9 Sunshine Blvd
Ormond Beach, FL 32174

RE: CG Docket No. 02-278 Preemption

The Broadcast Team, Inc. is filing these comments in response to a request for comment disseminated by the Federal Communications Commission pursuant to 47 CFR §§ 1.415, 1.419. The Broadcast Team, Inc. is a service provider that can broadcast thousands of prerecorded messages to residences and businesses around the country. We have been in business since 1992 and we have always endeavored to comply with all laws applicable to our services. Our dialers are programmatically restricted from placing any intrastate call which is the heart of question to the FCC. Does the FCC have exclusive rulemaking authority and jurisdiction over interstate telephone calls and does that authority preempt state law?

On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243, which amended the Communications Act of 1934 by adding a new section, 47 U.S.C. § 227. The TCPA mandated that the Commission implement regulations to protect the privacy rights of citizens by restricting the use of the telephone network for unsolicited advertising. On September 17, 1992, the Commission adopted a *Report and Order* (CC Docket 92-90, FCC No. 92-443), which established rules governing unwanted telephone solicitations and regulated the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

The Broadcast team, Inc. reiterates and affirms those arguments propounded in the petition filed by ALLIANCE CONTACT SERVICES; AMERICALL GROUP, INC.; AMERICAN BANKERS ASSOCIATION; AMERICAN BREAST CANCER FOUNDATION; AMERICAN FINANCIAL SERVICES ASSOCIATION; AMERICAN RESORT DEVELOPMENT ASSOCIATION; AMERICAN TELESERVICES ASSOCIATION; AMERICA'S COMMUNITY BANKERS; ANSWERNET NETWORK; CANCER RECOVERY FOUNDATION OF AMERICA; CONNEXTIONS; DIRECT MARKETING ASSOCIATION; EFFECTIVE TELESERVICES, INC.; FREEEATS.COM, INC. D/B/A CCADVERTISING; HUMANE SOCIETY OF GREATER AKRON; INFOCISION MANAGEMENT CORP.; KIDS WISH NETWORK; MIRACLE FLIGHTS FOR KIDS; MULTIPLE SCLEROSIS ASSOCIATION OF AMERICA; NATIONAL CHILDREN'S CANCER SOCIETY; NATIONAL MULTIPLE SCLEROSIS SOCIETY; NOBLE SYSTEMS CORP.; NORTHWEST DIRECT MARKETING, INC.; NPS; OPTIMA DIRECT, INC.; PRECISION RESPONSE CORP.; SITEL CORP.; SOUNDBITE COMMUNICATIONS, INC.; SYNERGY SOLUTIONS, INC.; TELE-RESPONSE CENTER, INC.; TELETECH HOLDINGS, INC.; TPG TELEMAGEMENT, INC.; AND WEST BUSINESS SERVICES, LP.

They are entirely correct in asserting that the FCC has exclusive regulatory jurisdiction over interstate telemarketing.

Currently, the existing state regulation of interstate telemarketing is crushing. Although the Commission has stated that the TCPA applies to both intrastate and interstate communications, since that assertion listed in the Report and Order, numerous states have enacted do-not-call rules that make no distinction between intrastate and interstate calling and, as outlined in ours, and other filings, these states are actively and aggressively enforcing those laws against interstate telemarketers and continue to pass new laws aimed at regulating those interstate telemarketers.

As outlined before in the above referenced filing, federal law requires a broad, jurisdictional approach to the regulation of interstate telemarketing. Congress has already determined that only the FCC has jurisdiction over interstate telemarketing calls. See the above reference report and order, ¶ 83-85. Additionally, Congress has clearly stated that the Commission has no legal authority to relinquish federal jurisdiction to the states.

In fact, when Congress enacted the TCPA, it extended federal authority over telemarketing by amending section 2(b) to give the Commission jurisdiction over both interstate and intrastate calls. When Congress did so it was noted that states lack jurisdiction over interstate calls. The Commission's *Report and Order* regarding the TCPA was correct. Specifically, the Commission noted that states have jurisdiction over intrastate calls ONLY, while the Commission has jurisdiction over interstate calls. In a plain and unambiguous reading of the TCPA "nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive INTRASTATE requirements or regulations on, or which prohibits" the use of certain telemarketing practices. Section 227(e)(1) establishes that the states have no authority whatsoever over interstate calls.

This Commission has frequently exercised its authority to preempt state regulation and has been repeatedly affirmed by the courts. The Commission has recently exercised its preemptive power regarding Vonage's DigitalVoice and other VOIP services. Correspondingly, the Commission should conclude here that state regulation of interstate telemarketing is inconsistent with the pro-competitive policy of preempting inconsistent state law. The Commission has the power to preempt state regulation of interstate telemarketing. Anything short of preemption will effectuate an impracticable system of inconsistent state law.

The Broadcast Team has, and always will, endeavor to comply with applicable laws. We believe that, relative to our services as a provider of interstate calls, only Federal law applies. It is burdensome for small companies such as The Broadcast Team to comply with the myriad of state laws when there is no consistent theme to these laws. As such, the FCC should state firmly that it

has exclusive jurisdiction and that state laws are preempted by the TCPA.

Sincerely,

Robert J. Tuttle
CEO
The Broadcast Team, Inc.